U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 01 153 52697 Office: CALIFORNIA SERVICE CENTER Date: SEP 30 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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**DISCUSSION**: The director denied the employment-based preference visa petition and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a California corporation that seeks to employ the beneficiary as a project manager. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition because no qualifying relationship exists between the petitioner and the claimed foreign entity.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the evidence establishes that the foreign entity owns 90 percent of the petitioner's outstanding shares of stock.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), states, in pertinent part:

> (1) Priority Workers. – - Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. – - An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner avers that it: (1) is a subsidiary of the Hong Kong entity, iOM International Holdings Ltd. (iOM International); (2) provides custom software implementation and system development; and (3) employs seven persons full-time, including the beneficiary, who is currently occupying the proffered position as a nonimmigrant intracompany transferee (L-1A). The petitioner is offering to employ the beneficiary permanently at a salary of $75,000 per year.

A petitioner must establish that it and the foreign entity share a common relationship. 8 C.F.R. § 204.5(j)(3)(i)(C). When filing the petition, the petitioner claimed that it was a subsidiary of iOM International, a Hong Kong entity. According to the petitioner, in October 1998 iOM International paid

$4,500 to purchase 450 shares of its stock, with the remaining 50 shares owned by an individual. As documentary evidence of the claimed relationship, the petitioner submitted, among other documents, copies of: (1) a wire transfer; (2) its Articles of Incorporation; (3) its stock certificates; and (4) its 1999 corporate tax return (Form 1120).

The evidence submitted did not persuade the director that the two entities shared a parent/subsidiary relationship. Therefore, on February 11, 2002, the director requested that the petitioner submit, among other items, proof of its stock purchase. The petitioner complied with the director's request by submitting a copy of a December 1998 wire transfer for $10,000. The director denied the petition due to the lack of a qualifying relationship between the U.S. and Hong Kong entities. The director noted in the denial letter that the petitioner submitted copies of two wire transfers – one was dated October 27, 1998 for $6000 and the other was dated December 24, 1998 for $10,000 – and stated that it was unclear which wire transfer pertained to the purchase of the petitioner's shares of stock. The director also discussed Schedule K of the petitioner's 1999 Form 1120. According to the director, lines four and 10 were checked "No," which contradicted the petitioner's claim that it was owned by a foreign entity.

On appeal, counsel states that the director made an error when referring to Schedule K of the petitioner's 1999 tax returns. According to counsel, line 10 did indicate that the petitioner was 90 percent owned by a Hong Kong business. Regarding line four of the Schedule K, counsel states that the petitioner's tax preparer erred when completing that line, and counsel submits a letter from the petitioner's tax preparer attesting to this fact. Counsel additionally submits the following documents: (1) a clearer copy of the October 1998 wire transfer for $6,000; (2) a payment confirmation from a bank in Hong Kong; (3) a copy of the petitioner's bank account statement showing the receipt of the October 1998 wire transfer; (4) a letter from the foreign entity regarding its payment of monies for the petitioner's shares of stock; (5) a letter from the management company regarding the payment; and (6) a duplicate copy of the stock ledger. Counsel reiterates that there is ample evidence to establish that iOM International owns 90 percent of the petitioner and is, therefore, the petitioner's parent company.

Counsel's statements on appeal and the documentary evidence provided have not sufficiently established that the petitioner is a subsidiary of iOM International of Hong Kong. The regulations at 8 C.F.R. § 204.5(j)(2) define a subsidiary, in pertinent part, as a firm, corporation, or other legal entity of which a parent owns directly or indirectly, half of the entity and controls the entity. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The

corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

The AAO concurs with counsel that the director made an error when stating that the petitioner failed to disclose that it was owned by a foreign entity at line 10 of the Schedule K that was attached to the Form 1120. It is apparent from a review of the petitioner's Form 1120 that line 10 indicated "Yes," and stipulated that a Hong Kong entity owned 90 percent of the petitioner's class of stock. Therefore, the director's comments regarding line 10 of the Schedule K shall be withdrawn.

To establish that the petitioner is a subsidiary of iOM International, counsel relies upon the stock certificates, the stock ledger, and the copies of the two wire transfers. According to counsel, in October 1998, iOM International paid the petitioner $4,500 for 450 shares of the petitioner's stock, and that this purchase is evidenced by the stock certificate and the stock ledger. Upon review of this evidence, however, the AAO finds that it is inadequate to persuasively establish ownership.

According to the stock ledger, on October 2, 1998, the petitioner issued stock certificate number one to Sunil De Silva for 50 shares of stock at a cost of $500. The ledger states further that on October 2, 1998, the petitioner issued stock certificate number 2 to iOM International for 450 shares of stock at a cost of $4,500. The ledger indicates further that on July 8, 1999, Sunil De Silva transferred the 50 shares to Harendra M. Wijeyekoon at which time the petitioner issued stock certificate number three. The record does not contain a copy of stock certificate number one that was allegedly issued to Sunil De Silva in October 1998. The AAO, therefore, cannot confirm whether the information in the ledger is correct. More importantly, however, there is no documentary evidence that, at the time stock certificate number two was issued to iOM International, the petitioner received monies from iOM International for these 450 shares. The wire transfers in the record, which show that the petitioner received $6,000 from iOM International on October 27, 1998 and $10,000 in December 1998, attest to the transfer of monies that occurred subsequent to the alleged stock purchase. The petitioner must establish that it received $4,500 from iOM International for the specific purpose of purchasing its shares of stock as of the date that the stock certificates were issued. The October and December 1998 wire transfers establish only that iOM International transferred money into the petitioner's bank account, not that this money was to purchase shares of the petitioner's common stock.

To establish that the wire transfer for $6,000 was for the purchase of stock shares, counsel submits two letters from the petitioner's Chief Executive Officer (CEO). According to the CEO, the $6,000 that the petitioner received from iOM International was used to purchase the 450 shares of stock ($4,500) and for initial start-up expenses ($1,500). Both letters are problematic, however. In one letter, the CEO states that the money was transferred "in order to obtain a 95% holding in the said company." In the second letter, the CEO describes the petitioner as a "fully owned subsidiary" of iOM International. Both of these statements contradict the

petitioner's claim on its corporate tax returns that it is only 90 percent owned by iOM International. Further confusing iOM International's percentage of ownership in the petitioner are iOM International's financial statements, which are dated December 31, 1998. According to the statements, the petitioner is 100 percent owned by iOM International.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The documentation in the record does not enable the AAO to favorably determine that the petitioner is a subsidiary of iOM International, in that iOM International owns and controls this particular U.S. entity. Simply asserting that iOM International owns a majority of the petitioner's shares of stock is not enough. The petitioner must establish not only the exact percentage of iOM International's ownership interest in the U.S. entity, but also provide proof that it paid for the petitioner's shares of stock when the stock certificates were issued. As the petitioner has failed to establish that it is a subsidiary of iOM International, the director's decision to deny the petition shall not be disturbed.

Beyond the director's decision, because the petitioner has not established the existence of a qualifying foreign entity, the beneficiary cannot meet the requirement of 8 C.F.R § 204.5(j)(3)(i)(B), which states that the beneficiary must have been employed by the qualifying foreign entity in a managerial or executive capacity for at least one year in the three years immediately preceding his entry into the United States in a nonimmigrant status. Although the director did not discuss this issue in his denial letter, it is a second reason why the petition may not be approved. Without a qualifying foreign entity, the beneficiary cannot have the necessary work experience as discussed in the cited regulation.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed. The petition is denied.